IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1945 OF 1998

1.Shankar Maruti Kumbhar)
2.Dnyanu Maruti Kumbhar)
3.Pandurang Maruti Kumbhar)
4.Namdeo Maruti Kumbhar)
5.Jagannath Ganapati Kumbhar)..PETITIONERS

Versus

1. The State of Maharashtra)
2. The Special Land Acquisition)
Officer No.4.)
3. The Commissioner, Revenue)
Division, Satara.)
4. The Collector, Stara Division)
Satara.)..RESPONDENTS

Mr. S. Rajashirke i/b. Mr. M.S.Karnik, for the Petitioners
Mrs. S.S.Bhende, A.G.P. for Respondent Nos. 1 to 4.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 18th March, 2005

ORAL JUDGMENT (PER F.I. REBELLO, J):

. The petitioners own lands in the benefited zone. The respondents issued notification under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986. Subsequent thereto notice was issued under Section 4(1) of the Land Acquisition Act, notifying the intention of the appropriate Government to acquire an area of 81 Ares out of land bearings Gat No.873 and an area of 0.40 Ares out of the land bearings Gat No.809. The case of the petitioners is that by virtue of that the petitioners would not be left with even 1 Acre of land and the total holding of the petitioners are not

more than 8 Acres and consequently the land should not be acquired. They filed objections on 10th November, 1997 which were received. As nothing was done, legal notice came to be served through the petitioners Advocate on 9th March, 1998. It is also pointed out that previously land bearing Gat No.179 admeasuring 2 Hectares and 87 Ares was a tenure land in the hands of the petitioners' father Maruti Gopala Kumbhar and was so shown in the record of rights. Subsequently on the death of Maruti their names were shown which were deleted by revenue entry No.2116. It is their case that they were never in possession of land Gat No.179 and their father had dealt with the said land. It was, therefore, set out that the total holding was 1 Hectare and 61 Ares and Gat No.179 could not be included for the purpose of calculating the holdings. It was also pointed out that late Gopala Kumbhar had two sons Maruti and Ganpat. On the death of Ganpat and Maruti the petitioners along with others are the heirs of the property which has so far not been partitioned. It is then stated that the objections were not heard and the declaration under Section 6 of the Land Acquisition Act came to be issued. The petitioners, therefore, filed the present petition to challenge the declaration under Section 6.

2. The challenges which can be briefly summarised are that they are not holding lands in excess of 8 Acres. The land bearing Gat No.179 ought

not to have been included in their share and the objections under Section 5(A) were not heard. It is also pointed out that the expression "person" would mean each member of the HUF and their shares had to be taken separately.

2. Initially reply was filed by Umakant S. Kharat. It is pointed out that the land had been acquired for rehabilitation of persons affected by the Urmodi Irrigation Project. The land admeasuring 1528 hectare and 39.68 R of 23 villages was coming in the affected zone. In 1994 the capacity of the project was increased and 9 new villages were included of which the land admeasuring 579 hectares and 58.67 Ares came under the affected zone. The Tahsil, Satara Khatav and Man of District Satara are in the benefited zone of the said project. There are about 83 villages of which the land admeasuring 43439 hectare and 24 R would be benefited by the project. For rehabilitation of the affected persons they would require the land admeasuring 3364 hectares 86 R. The petitioners are residents of village Atit, Taluka Satara and their land is sought to be acquired for the purpose of resettlement of project affected persons. The Notification under Section 11(1) was published on 2nd July, 1981. Thereafter after complying with the requirement the notification was issued under Section 15(1) of the Act. The expression "Act" so far has been used to mean the Maharashtra Project Affected Persons Rehabilitation

Act, 1986, which hereinafter referred to as the Act.

. The affiant has then dealt with the challenge to acquisition. It is pointed out that the objection raised by the petitioners was that after the death of their father all the lands were transferred and divided in their name. The mutation was effected vide entry NO.2279 and the names were entered in the revenue record and the land bearing Gat No.179-P was not held by them. It is pointed out that in mutation entry the names of the petitioners were entered. The petitioners father had purchased the land bearing Gat No.179 on 15th September, 1971 and accordingly mutation entry was effected on 4th April, 1972. Dealing with the objection under Section 5(A) it is pointed out that the hearing was fixed on 15th November, 1997 on which day the petitioner was not present. It is also pointed out that as the transfer of the land was after 2nd July, 1981, the objections were rejected. Considering the holding of the petitioners the land was acquired.

. An additional affidavit came to be filed by Ms. Snehal Barge in which it is pointed out that by Notification under Section 13(1) of the Act published in the Government Gazette on 13th March, 1996 and 1st December, 1986 the Slab II mentioned in Part II of the Schedule to the Act was applied. It is also pointed out that on 2nd July, 1981 Gat No.179 stood in the name of Maruti Gopal Kumbhar.

3. Considering the pleadings and the contentions we may now dispose of the same. In so far as the contention of the petitioners that they were not heard the affidavit in reply clearly discloses that the matter was fixed for hearing on 15th November, 1997 on which date the petitioners were not present. In these circumstances the objections on the ground of non-hearing under Section 5(A) of the Land Acquisition Act must be rejected.

4. We then come to the second contention that Gat No.179 did not belong to the petitioner. The notification under Section 11(1) was published on 2nd July, 1981. The purported sale, if any, was in August, 1981. The learned Counsel was asked to produce the sale document if he had for reconsidering the matter. The same has not been produced. In other words if the transfer has been made after the Notification has been issued under Section 11 of the Act then the transfer is of no effect. The Authorities below were right, therefore, in holding that the land belonged to the petitioners. That contention must also, therefore, rejected.

5. That leaves us with the last contention, that the person includes each member of the HUF and consequently the area must be divided amongst each member of the HUF and if that be the case then the slab would not apply. Reliance for that puorpose was

placed on the judgment of a learned Single Judge of this Court in the case of **Vijay Anandrao Kshirsagar vs. State of Maharashtra & Ors., AIR 1995 Bom.206.** We may firstly note that in that case the judgement was under the provisions of the Maharashtra Resettlement of Project Displaced Persons Act,l 1976. There the expression used was "family" under Section 2(9) and holding under Section 2(10). That came up for consideration. In the Act of 1982 there is no definition of "Family". The view, therefore, taken under the Act of 1976 cannot be applied to the Act of 1986. The judgment, therefore, would be clearly distinguishable.

. To understand the correct import of the contentions the provisions of the Act themselves can be noted. The expression "affected person" is defined under Section 2(2), which reads as under:-

"(2) "affected person" means--

(a) an occupant whose land in the affected zone (including land in the gaothan) is acquired under Section 14 for the purpose of a project:

Explanation.-- For the purposes of this sub-clause, where any agricultural land is recorded in the relevant village records in the name of one of the brothers as a Karta or

> Manager of a Hindu Joint family then every brother (or son or sons of any deceased brother all together as one unit) who has a share in the land, whether his name is recorded in such village record or not, shall be treated as affected person."

From a reading of the aforesaid sub-section (2) with the explanation it will be clear that the expression "affected person" has been given a wider meaning than as contained in the sub-section, pursuant to the explanation. If the name of one of the brothers is entered as Karta or Manager of the Hindu joint family then every brother who has a share in the land whether his name is recorded in such village record or not shall be treated as affected person. Therefore, it is only the brothers and not every member of the H.U.F. who is entitled to the benefit. In other words for the purpose of treating the person as an ’affected person’ a wider meaning has been given, but at the same time limiting it to a class of members of the H.U.F. The expression "holding" has been used to mean the total land held by a person as an occupant or tenant or as owner. The expression "occupant" has not been defined under the Act. However, it is relateable to the person. The question is whether the expression "person" in case of HUF would mean each member of the HUF to be treated as a distinct person. The object of the Act is to acquire excess land beyond the slab from the

persons from the benefited zone. If the expression "person" is used to mean each member of the HUF then it would be practically impossible to acquire any land for rehabilitation, considering that most of the lands are still held on undivided basis, just like the case of the petitioners. If the expression is so held then for all purposes it will be impossible to apply the slab. The word "person" and the words "affected person" must be seen in that context. The intent of the Legislature, therefore, is to treat an affected person differently from a person in a benefited zone. In the benefitted zone, the expression person must be given normal meaning and not an extended meaning. If so held H.U.F.is a person. Once that be the case we do not find any merit in the contention advanced on behalf of the petitioners.

8. Having said so, we find no merit in this petition. In the light of that Rule discharged.

There shall be no order as to costs.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)